

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LEDCOR INDUSTRIES (USA) INC., a  
Washington corporation,

Plaintiff,

vs.

VIRGINIA SURETY COMPANY, INC., a  
foreign corporation; NATIONAL FIRE &  
MARINE INSURANCE COMPANY, a foreign  
corporation; GEMINI INSURANCE  
COMPANY, a foreign corporation;  
CLARENDON NATIONAL INSURANCE  
COMPANY, a foreign corporation; ESSEX  
INSURANCE COMPANY a/k/a MARKEL  
ESSEX, a foreign corporation; AMERICAN  
STATES INSURANCE COMPANY, a/k/a  
SAFECO INSURANCE, a foreign corporation;  
TRANSPORTATION INSURANCE  
COMPANY, a/k/a CNA INSURANCE  
COMPANY, a foreign corporation,

Defendants.

NO. CV09-1807 RSM

ORDER GRANTING PLAINTIFF  
LEDCOR INDUSTRIES (USA)  
INC.'S MOTION FOR DEFAULT  
JUDGMENT AGAINST  
DEFENDANT VIRGINIA SURETY  
COMPANY, INC. AND DEFAULT  
JUDGMENT

THIS MATTER having come on duly and regularly for hearing before the undersigned  
Judge of the above-entitled Court on plaintiff Ledcor Industries (USA) Inc.'s Motion for Default  
Judgment against Defendant Virginia Surety Company, Inc., and the Court having reviewed the

**Order Granting Plaintiff Ledcor  
Industries (USA) Inc.'s Motion for  
Default Judgment against Defendant  
Virginia Surety Company, Inc. and  
Default Judgment**

1 motion, all supporting evidence, and the records and files herein, including the following:

- 2 1. Plaintiff Ledcor Industries (USA) Inc.'s Motion for Default Judgment against
- 3 Defendant Virginia Surety Company, Inc.;
- 4 2. Declaration of Richard L. Martens in Support of Plaintiff Ledcor Industries
- 5 (USA) Inc.'s Motion for Default Judgment against Defendant Virginia Surety
- 6 Company, Inc.;
- 7 3. Declaration of Scott A. Samuelson in Support of Plaintiff Ledcor Industries
- 8 (USA) Inc.'s Motion for Default Judgment against Defendant Virginia Surety
- 9 Company, Inc., with attached Exhibits 1-7;
- 10 4. Billing statements for time and expenses of Martens + Associates | P.S., including
- 11 the vendor invoices, billed in the Underlying Litigation as of April 30, 2009; and

12 deeming itself fully advised in the premises, now, therefore:

13 THE COURT MAKES THE FOLLOWING FINDINGS:

- 14 1. Virginia Surety Company, Inc. ("Virginia") was properly served with the
- 15 summons and complaint in this action, Virginia failed to appear or defend, and the
- 16 Court's Default Order (Dkt. No. 36) was properly entered against Virginia;
- 17 2. Virginia had a contractual duty to defend and indemnify Ledcor arising out of the
- 18 consolidated Adelaide litigation under the terms and conditions set forth in its
- 19 Commercial General Liability insurance, policy number 2CG50120600, issued to
- 20 Ledcor, its named insured;
- 21 3. Under said policy, Virginia was required to provide Ledcor with primary
- 22 coverage for defense and indemnity obligations, including but not limited to,
- 23 obligations to pay damages, fees, expenses, taxable costs, prejudgment, and post-
- 24 judgment interest awarded against Ledcor;

4. Virginia failed to defend and indemnify Ledcor against the claims asserted against Ledcor in the Adelaide litigation;
5. Because it failed to defend Ledcor or contribute to its defense in any way, Virginia breached its duty to defend and indemnify Ledcor and is therefore liable for all damages, including all attorneys' fees, costs and expenses incurred by Ledcor that arise out of the Adelaide litigation;
6. Virginia's acts and/or omissions, including its failures to respond, investigate and/or accept Ledcor's tenders of defense and indemnity, constitute violations of Washington statutes (the Washington Consumer Protection Act, RCW 19.86 *et seq.* and the Washington Insurance Fair Conduct Act, RCW 48.30.015);
7. Ledcor defended the claims asserted against it in the Adelaide litigation and the fees and the costs it incurred are reasonable and were reasonably necessary to defend the claims asserted against it by the Adelaide Townhomes and the Adelaide Condominium homeowners associations and the owner/developer West Seattle Property, LLC;
8. The hourly rates charged by Ledcor's counsel and its paralegals are reasonable; and,
9. Pursuant to the terms and condition of said policy, Virginia is liable for: (1) the settlement amount Ledcor paid less all monies recovered from fourth-party defendants, totaling **\$993,703.00**; (2) the total attorneys' fees and costs as of January 31, 2010 less the amount Ledcor recovered from fourth-party defendants' insurer in the amount of **\$739,446.26**; and, (3) prejudgment interest from January 31, 2010 through March 18, 2010 in the total amount of **\$26,210.91**.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff

Ledcor Industries (USA) Inc.'s Motion for Default Judgment against Defendant Virginia Surety Company, Inc. is hereby GRANTED. Accordingly, the Court enters a Default Judgment against Virginia Surety Company, Inc. in the total judgment amount of **\$1,759,360.17** as follows:

#### JUDGMENT SUMMARY

- |    |                                  |   |
|----|----------------------------------|---|
| 1. | Judgment Creditor:               | Ledcor Industries (USA) Inc., a Washington corporation ("Ledcor")   |
| 2. | Judgment Debtor:                 | Virginia Surety Company, Inc., a Virginia corporation ("Virginia")  |
| 3. | Principal Judgment Amount:       | <b>\$1,759,360.17</b><br>(\$993,703.00 in damages; \$739,446.26 in fees and costs; and prejudgment interest of \$26,210.91) |
| 4. | Per cent Interest on Judgment:   | <b>0.36</b> percent interest per annum<br>(18 U.S.C. §1961)   |
| 5. | Attorneys for Judgment Creditor: | Martens + Associates   P.S.<br>705 Fifth Avenue South, Suite 150<br>Seattle, Washington 98104<br>Telephone: (206) 709-2999  |

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that interest shall accrue on the Judgment Amount at the rate of **0.36** percent per annum from the date of entry of this default judgment through and including the date of the full satisfaction of this judgment pursuant to RCW 19.52.020(1)(a).

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Ledcor is authorized to file a motion for an *additur* to this default judgment, to include all attorneys' fees and costs incurred by Ledcor from February 1, 2010 in obtaining this default judgment and the *additur*.

DONE THIS 4<sup>th</sup> day of June 2010.



RICARDO S. MARTINEZ  
UNITED STATES DISTRICT JUDGE

Presented by:

**Martens + Associates | P.S.**

By s/ Richard L. Martens

Richard L. Martens, WSBA # 4737

Scott A. Samuelson, WSBA # 23363

Rose K. McGillis, WSBA # 34469

Attorneys for Defendant/Counter-Claimant

Ledcor Industries (USA) Inc.

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